

Department of Permits Approvals and Inspections  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
Baltimore County, Maryland

In the Matter of

Civil Citation No. 86796

Mark Kendall Dubbert

10 Paterwal Court

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE

This matter came before the Administrative Law Judge on May 4, 2011 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 428, failure to tag or remove all untagged or disabled vehicles; section 101, 102.1; Zoning Commissioner's Policy Manual (ZCPM), failure to cease all service garage activities on residential property.

On April 15, 2011, pursuant to § 3-6-205, Baltimore County Code, Inspector David Kirby issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1<sup>st</sup> class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$1,000.00 (one thousand dollars).

The following persons appeared for the Hearing and testified: Mark Kendall Dubbert, Respondent, and David Kirby, Baltimore County Code Enforcement Officer.

Testimony was presented that, upon complaints from neighbors, an initial inspection of the subject property was carried out on 11/12/10, at which time one vehicle was found on blocks in the driveway and no less than three untagged vehicles were parked on the property. A Correction Notice was issued. After a series of conversations with the Respondent and several re-inspections, as well as a Citation for untagged vehicles and failure to cease service garage activities after a re-inspection on 12/13/10, the property was brought into compliance and all vehicles removed or tagged by the day prior to the hearing. The hearing and citation were cancelled by the inspector.

The Inspector spoke with the Respondent, who, unhappy with the state of the applicable county regulations in the matter, stated that he would pursue the matter further through official channels.

Unfortunately, on 1/25/11 the Inspector once again was contacted by a neighbor of the Respondent who reported that there were untagged vehicles on the subject property and service garage activities were again occurring. The inspector immediately revisited the property and found two vehicles in violation on the property. He reopened the case and spoke to the Respondent, who assured him that the vehicles would be removed within the week. On re-inspection 1/31/11 the inspector found one vehicle on a trailer parked in the street and one untagged vehicle on the property itself. On 2/4/11 a re-inspection revealed an untagged vehicle and the vehicle on the trailer, now parked on the Respondent's driveway, was clearly having work done on it. On 2/8/11 the inspector spoke with the Respondent who informed him that he was now applying for historic vehicle tags, would cover one of the vehicles, but stated that these actions were the "best he could do". In the course of the conversation he acknowledged that he "does work on cars", but denied his property was an illegal service garage. He once again said he would act through official channels regarding the situation and stated that he had a pending appointment with his Councilman on 2/22/11.

The Inspector took no further action until 2/25/11, when he spoke to Respondent's Councilman, who had not yet met with the Respondent. On 3/11/11 the Inspector was again informed by neighbors that service activities were still taking place on the subject property; he once again called the Councilman's office and was informed that there had been a meeting to discuss the Respondent's situation. The Inspector was advised to take whatever action he considered appropriate, and thereupon, once again issued a Correction Notice for untagged vehicles and failing to cease service garage activities on the subject premises. Subsequent re-inspections on 3/21/11 and 4/1/11 revealed the violations to be continuing. On 4/15/11, another inspection revealed one untagged vehicle and the Respondent working on a tagged vehicle, both on the subject property. A Citation was issued for the untagged vehicle and for the failure to cease service garage activities. On 5/2/11 the Respondent called the Inspector, told him he "had a plan to comply" and requested that the hearing be postponed. The Inspector initially agreed, but upon realizing that the neighbors/Complainants would be appearing,

and in light of the length of time already dedicated to the matter, informed the Respondent on 5/3/11 that the hearing would proceed as scheduled. On 5/4/11 a final pre-hearing inspection revealed an untagged vehicle on the premises. The Inspector testified that the tag and service garage violations had involved numerous vehicles over a considerable period of time, that what he termed “musical broncos” could not be allowed to continue, and therefore the matter obviously needed to be resolved.

Barry Klein, one of the neighbor/complainants, testified that he had observed work being done on numerous vehicles for years. He complained of noise and the use by Respondent of power tools during the week as well as weekends. He also related that he had seen Respondent pouring engine fluids down the sewer.

Sara Fort, another neighbor/complainant, testified that while she was home on the weekends, beginning early in the morning, she had seen the Respondent working on various vehicles, and described him using numerous tools and types of machinery in his work.

The Respondent testified that he is an auto hobbyist with a special interest in “Broncos” .He stated that he worked on vehicles for relaxation and a challenge to his skills. He described his recent activities as “thinning down the herd”, and offered that his daughter would be taking one of the vehicles. He noted that he does the work outside because the vehicles don’t fit in his garage and observed that he does no work after “dinner time”. He acknowledged that he owns numerous tools used in his activities, including both a high and low pressure compressor, and denied that he had any customers or collected any money for his activities.

Having heard the testimony and evidence presented at the Hearing, I am clearly convinced that the citation for untagged vehicles has been proven. There is no question that numerous vehicles without appropriate registration tags have been stored on the premises. The reason for their presence on Respondents property is not a relevant inquiry needed to sustain the violation under section 428.1 of the Baltimore County Zoning Regulations (BCZR).

As to the alleged violation of failing to cease all service garage activities, I note that section 101 of the Zoning Commissioners Manual states that a “service garage” “(1) includes the use of any land or

residential garage, for the storage or repair of motor vehicles; (2) includes the use of any land or enclosed building where motor vehicles are stored or repaired, pursuant to the operation of truck rental, car rental, or taxicab businesses.” The two sections are not dependant on each other and each stands alone. The Respondent clearly uses his land for the storage and repair of motor vehicles. His motivations, explanations and reward, if any, for doing so are neither relevant nor necessary in order to find him in violation. The testimony of all the witnesses, including the Respondent himself, support this finding.

The BCZR, section 101.1 defines “Garage, Service—“ as “A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire, or sale.” The Respondent has turned his property clearly into a garage—the question raised by the citation is whether or not it is a “service garage” which is the prohibited activity on the subject property of which he is cited. He spends considerable and regular time working on the vehicles in question and utilizes various types of tools, including compressors, which circumstantially allude to more than a “personal endeavor” I believe the term “remuneration” is purposely utilized in the Regulation to include the widest possible range of any definable “reward”. It is not limited in any way and is purposely set apart from the traditional commercial activities of hire and sale (which could be taken to mean the sale of either goods or services). Therefore, “reward” for the purposes of this regulation definition need not be monetary. It is clear from the testimony that a number of vehicles pass through the Respondents activities. While I believe that the appearance and disappearance of vehicles over time as testified to by the Inspector and witnesses, to places and people unknown circumstantially convince me that there is some remuneration, possibly monetary in nature occurring when they return to wherever they came from, I also believe and find that the intention to transfer one of the subject vehicles by the Respondent to his daughter is certainly remuneration of an emotional and familial variety—he has provided something of value to his daughter by virtue of his activities on the vehicle. One might even take the position that he has received remuneration personally in repairing vehicles and sending them to wherever their ultimate destinations for use may be.

In any event, and for all of the above reasons, individually or collectively, I find that he has in fact engaged in the activities of a service garage.

THEREFORE:

IT IS ORDERED by the Administrative Law Judge that a civil penalty be imposed in the amount of \$ 1,000.00(one thousand dollars) for the failure to tag or remove all untagged or disabled vehicles on the subject property.

IT IS FURTHER ORDERED that a civil penalty be imposed in the amount of \$1,000.00(one thousand dollars) for the failure to cease all service garage activities on the subject property.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 16<sup>th</sup> day of May 2011

Signed: ORIGINAL SIGNED  
Lawrence M. Stahl  
Managing Administrative Law Judge

**NOTICE TO RESPONDENT:** The Respondent is advised that pursuant to §3-6-301(a) of the Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security in the amount of the penalty assessed.

LMS/jaf